

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN THE MATTER OF THE COMPLAINT OF )  
BRUCE OAKLEY, INC. and JOHNSTON'S PORT 33 )  
INC., OWNERS OF THE M/V LEGACY, FOR ) Case No. 19-CV-184-RAW  
EXONERATION FROM OR LIMITATION OF, )  
LIABILITY. )

**CLAIMS OF CONSOLIDATED GRAIN AND BARGE CO.**  
**AND CGB ENTERPRISES, INC.,**

COME NOW Consolidated Grain and Barge Co. and CGB Enterprises, Inc. (hereinafter collectively "CGB"), by and through their attorneys, Fox Galvin, LLC and Crowe & Dunlevy, and for the Claims against Johnston's Port 33, Inc., and Bruce Oakley, Inc. (hereinafter collectively "Petitioners") state on information and belief:

1. Consolidated Grain and Barge Co. is a corporation duly organized and existing under Missouri law and a wholly owned subsidiary of CGB Enterprises, Inc., a corporation duly organized and existing under Louisiana law. These two corporations, collectively referred to as "CGB," buy and sell agricultural fertilizer.

2. Petitioner Johnston's Port 33, Inc. (hereinafter "Johnston's Port") owned and operated a land based storage facility and various barge fleeting areas on the Grand River and Arkansas River near Muskogee, Oklahoma, and agreed that CGB would deliver fertilizer to Johnston's Port by barge and Johnston's Port would keep and protect said barges until Johnston's Port could unload and store said fertilizer in a dry, safe, and secure location.

3. Petitioner, Bruce Oakley, Inc., admits it wholly owned and operated Johnston's Port as a subsidiary.

4. CGB owned and loaded diammonium phosphate (hereinafter “fertilizer”) having a value of \$516,291.63 into barge MTC 7256 and thereafter said barge was delivered to Johnston’s Port on or about March 27, 2019.

5. CGB owned and loaded fertilizer having a value of \$567,577.87 into barge LTD 11140 and thereafter said barge was delivered to Johnston’s Port on or about April 5, 2019.

6. At the time of delivery of the aforesaid barges laden with CGB’s fertilizer, the barges were in seaworthy condition, and the fertilizer cargo in each barge was in commercially acceptable and merchantable condition suitable for sale and having a retail value of greater than the values stated above.

7. Petitioners accepted said barges and CGB’s fertilizer cargo laden therein but never unloaded said barges. Instead, Petitioners accepted and kept the barges and fertilizer within their exclusive care, custody, and control and thereby Petitioners became bailors of said fertilizer.

8. Petitioners had a duty to use reasonable care under the prevailing and foreseeable circumstances to provide a safe mooring and berth to said barges.

9. In breach of Petitioners’ duties as bailor and Petitioners’ duties to exercise reasonable care, the cargo was totally lost on or about May 23, 2019, when said barges were allowed to float adrift on the Arkansas River and come to rest inverted against the upriver side of the Webber Rivers Fall Lock and Dam.

10. By virtue of the bailment existing when CGB lost its fertilizer, Petitioners are presumed to be at fault for the total loss of said fertilizer.

11. The loss of CGB cargo as described herein could not have occurred absent negligence of the Petitioners such that *res ipsa loquitur* applies.

12. On and before May 23, 2019, Petitioners were negligent and/or its vessel(s) were unseaworthy in one or more of the following respects, all in breach of reasonable maritime practices given the existing and expected weather and river conditions of which Petitioners were or should have been aware, by:

- a. Failing to provide adequate personnel, vessels, mooring lines, anchors, and equipment to secure said barges;
- b. Failing to monitor the mooring and berths of said barges;
- c. Failing to provide experienced, competent, and sufficient personnel and vessels and crew to establish and maintain mooring of said barges;
- d. Permitting other vessels to tie off to said barges when the existing moorings of said barges were inadequate for this;
- e. Improperly tying the barges off to a tree when alternative proper mooring was available;
- f. Failing to employ seaworthy towing vessels of sufficient horsepower and/or a sufficient number of towing vessels as needed to provide and monitor a safe berth and secure mooring of said barges;
- g. Failing to adequately monitor the forecasted weather and river conditions in order to adjust personnel and equipment as needed to maintain safe berth and secure mooring of said barges.

13. On information and belief, CGB avers that Petitioners, by and through their owners, supervisors, managers, agents, employees, including the masters and crew of the *M/V Legacy* and any other vessels operated by petitioners in the area (hereinafter “other vessels”), negligently and/or by the unseaworthiness of the *M/V Legacy* and/or of other vessels proximately

caused said barges to become adrift and move uncontrolled with the current downstream and upon the upriver side of the Webber River Falls Lock and Dam resulting in the total loss of CGB's fertilizer cargo.

14. As a result of Petitioners breach of duties as bailor and/or as a result of Petitioners' negligence and/or unseaworthiness of the *M/V Legacy* or other vessels, CGB suffered damages in the amount of \$1,083,869.50, plus interest on this amount from date of loss.

15. That one or more or all of the foregoing breach, negligence, fault, and/or unseaworthiness was within the privity and knowledge of Petitioners, thereby defeating Petitioners' claim for exoneration from and limitation of liability.

WHEREFORE, CGB prays for judgment in their favor and against Petitioners in the amount of \$1,083,869.50 plus prejudgment interest and costs and for such further relief as the Court deems just and proper, including that Petitioners' Complaint for exoneration from or limitation of liability be denied.

Respectfully submitted,

/s/Deric McClellan  
DERIC McCLELLAN, OBA# 32827  
CROWE & DUNLEVY  
A Professional Corporation  
321 S. Boston Ave., Suite 500  
Tulsa, Oklahoma 74103  
(918) 592-9800  
(918) 592-9891 (facsimile)  
[deric.mcclellan@crowedunlevy.com](mailto:deric.mcclellan@crowedunlevy.com)

Ronald E. Fox (*pro hac vice* admission pending)  
FOX GALVIN, LLC  
One S. Memorial Drive, 12<sup>th</sup> Floor  
St. Louis, MO 63102  
(314) 588-7000  
(314) 588-1965 (facsimile)  
[rfox@foxgalvin.com](mailto:rfox@foxgalvin.com)

**Attorneys for Consolidated Grain and Barge Co.  
and CGB Enterprises, Inc.**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of September, 2019, I electronically transmitted the foregoing document to the Court Clerk using the ECF System for filing. Based on the records currently on file, the Court Clerk will transmit a Notice of Electronic Filing to the following ECF registrants:

James K. Mondl  
Tonkin & Mondl, LC  
701 Market Street, Suite 260  
St. Louis, MO 63101

And

John R. Woodard, III  
Coffey Senger & McDaniel, PLLC  
4725 E. 91<sup>st</sup> Street, Suite 100  
Tulsa, OK 74137

Attorneys for Petitioners  
Bruce Oakley, Inc. &  
Johnston's Port 33, Inc.

/s/Deric McClellan